

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9555 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KHERUNBEN KASAMBHAI SANDHI

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR.N.D.GOHIL, ASSTT.GOV.T.PLEADER FOR RESPONDENTS

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/02/99

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner has challenged the detention order,Annexure 'B' ,dated 13.7.1998 passed by the Commissioner of Police, Rajkot and has prayed for his immediate release from illegal detention.

The grounds of detention reveal that the detaining authority, on the basis of four registered offences under the Bombay Prohibition Act and also on the basis of two statements of confidential witnesses, was subjectively satisfied that the petitioner is a bootlegger and his activities are prejudicial for maintenance of public order. Accordingly, the impugned order of detention was passed which has been challenged in this petition on the ground that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order. Registration of four cases under the Bombay Prohibition Act and statements of two confidential witnesses furnish sufficient material on the basis of which the detaining authority rightly came to the subjective satisfaction that the petitioner is a bootlegger within the meaning of section 2 (b) of the Prevention of Anti-Social Activities Act, 1985 ('PASSA' for short). However, a bootlegger cannot be preventively detained unless his activities are found to be prejudicial for maintenance of public order. The learned AGP has relied upon two Division Bench decisions of this court in Popat Mohan vs. State, 1989 (1) GLR 412 and Kodarji Laxmanji vs Commissioner of Police, 1993 (2) GCD, 707 (Guj). On the basis of these two decisions, his contention has been that the activities of the petitioner viz. bootlegging activities on the face of it created disturbance of public order and as such, the detention order is valid. In Popat Mohan's case (supra), the Division Bench of this court held that consumption of country liquor by a large number of people itself is a danger to the public health. This is a matter of commonsense and such reasonable inference has got to be drawn by having recourse to experience of life. It has further proceeded to lay down that the activity of storing liquor on large scale and selling the same through liquor dens in public alone would be sufficient to adversely affect public order. Since this view of the Division Bench of this court does not seem to have been approved by the Apex court impliedly in the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad, AIR 1989 SC 491, with respect, it is difficult to follow the Division Bench verdict in face of the direct verdict to the contrary, of the Apex court. In Piyush Mehta's case (supra), the Apex court laid down three important points. The first is who is a bootlegger within the definition of section 2 (b) of PASA. The second point highlighted by the Apex court is the distinction between law and order and public order. The Apex court was considering, in this case, the provisions of PASA and has specifically observed at page 497 that-

"it is true , some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But,such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. "

The Apex court further observed that -

" It may be that the petitioner is a bootlegger within the meaning of section 2 (b) of the Act, but merely because he is a bootlegger, he cannot be preventively detained under the provisions of the Act unless, as laid down in sub section (4) of section 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order."

The Apex court in this case has thus further considered the enlarged scope and meaning of the expression 'public order' with special reference to sub-section (4) of section 3 .Therefore, the Division Bench pronouncements in the aforesaid cases by this court cannot safely be applied for holding that the activities of the petitioner were prejudicial for maintenance of public order. This court in Popat Mohan's case (supra) has specifically observed that mere incident of beating by the petitioner of witnesses will not constitute disturbance of public order,as such. Thus,these two cases cited by the learned AGP cannot be safely applied in support of the impugned detention order. Even in Kodarji Laxmanji's case (supra), the Division Bench has observed that it is only when even tempo of public life is disturbed which would come within the compass of public order and whether even tempo of public life is disturbed or not, would be a question to be considered in the light of facts and circumstances of each case.

Now,coming to the material on record in our case, registration of four cases under the Bombay Prohibition Act cannot be said to be activities prejudicial for maintenance of public order. These were the incidents where provisions of Bombay Prohibition Act were violated by the petitioner for which he was booked under various sections of the Bombay Prohibition Act .It was thus mere law and order problem for which the petitioner has been booked. Now, confidential statements of two witnesses themselves are stereotype statements. The first witness did not care to disclose what was contained in the jar which was offered by the petitioner to be kept by him.

The incident narrated by this witness cannot be said to be of that magnitude which was prejudicial for maintenance of public order.

Similarly, the statement of witness No.2 is that he was beaten on the suspicion that he was a man of the police and was passing on information to the police about the activities of the petitioner. Here also, public order cannot be said to have been disturbed.

The learned AGP argued that the length and magnitude of the activities have to be taken into consideration for deciding whether the activities were prejudicial for maintenance of public order or not. However, the registered offences cannot be pressed in service for determining the length and magnitude of the activities being prejudicial for maintenance of public order because these cases apparently did not disturb public order. So far as the statements of two witnesses are concerned, they narrated about two incidents dated 2.6.1998 and 10.3.1998. Thus, merely from these activities, extending within a period of three months only and that too on two occasions, it cannot be said that the length and magnitude of the prejudicial activities of the petitioner were such which can be called as activities prejudicial for maintenance of public order. Since these activities were not prejudicial for maintenance of public order, the impugned order cannot be sustained .

The writ petition, therefore , succeeds and is allowed. The impugned order of detention dated 13.7.1998 is hereby quashed. The petitioner shall be enlarged forthwith unless wanted in some other case.

parekh